

California Department of Consumer Affairs

Legal Guide U-3

RULES FOR OPERATION OF CONTESTS (California Business and Professions Code sections 17539-17539.3, 17539.35.)

September 1996

A "contest" is any game, puzzle, scheme, or plan which offers prospective participants the opportunity to receive or compete for gifts or prizes on the basis of skill or skill and chance, and which is conditioned wholly or partly on the payment of some value. "Contest" does not include a sporting event, performance, or tournament of skill, power or endurance between participants who are actually present.¹

A person who operates a contest may not represent, either directly or impliedly, that another has won any prize or item of value without disclosing its exact nature and approximate value. Similarly, representations may not be made to another that he or she has won any prize or item of value in a contest unless there has been a real contest in which at least a majority of the participants have failed to win.²

The law requires every person who conducts a contest to disclose on each entry blank the deadline for submission of that entry.³ Use of the word "lucky" to describe an entry form or symbol, or any other implication that advantage is conferred on the participant in preference to other participants, is prohibited. So too is the use of simulated checks, currency or items of value unless they bear the words "SPECIMEN - NONNEGOTIABLE" clearly and conspicuously.⁴

All contest and promotional puzzles and games must clearly and conspicuously disclose each of the following:

- All the rules, regulations, terms and conditions of the contest.
- The maximum number of puzzles or games which may be necessary to complete the contest and determine winners.
- The maximum amount of money, including postage and handling fees, which a participant

may be asked to pay to win each of the prizes offered.

- The date(s) upon which the contest will terminate, and upon which all prizes will be awarded.
- Whether future contests or tie-breakers, if any, will be significantly more difficult than the initial contest, and the method of determining prizewinners if a tie remains after completion of the last tie-breaker.⁵

Clear and detailed disclosures regarding the nature of the contest and number of contestants also must be made. The total number of contestants anticipated, and the percentage of contestants correctly solving each puzzle (based on prior experience) must be disclosed with the first solicitation and whenever payment of money is required to become or remain a participant.⁶ The exact nature and approximate value of the prizes must be disclosed clearly and conspicuously when they are offered.⁷ See Business and Professions Code section 17539.1(a), available at any law library, for additional details on these and other requirements.

Misrepresenting in any manner the odds of winning any prize is prohibited. Representing directly or impliedly that the number of participants has been limited significantly, or that any particular person has been selected to win a prize, is prohibited unless such is a fact. All prizes of the value and type represented must be awarded and distributed.⁸ The opportunity to win a prize cannot be conditioned on a minimum number of entries or contest participants.⁹

If a tie-breaker for extra cash or any other type of prize may be entered by paying money, it must be clearly disclosed to the participant that the payment is optional and that he or she is not required to make the payment to play for these prizes. Participants must be given, clearly and conspicuously, the opportunity to indicate that they wish to enter this phase of the contest

for free. However, participants may be required to pay reasonable postage and handling fees, which must be clearly disclosed whenever their payment is required.¹⁰

Every person conducting a contest must refund within one year of payment anything of value received from a participant making written request if the participant was unable to participate through no fault of his or her own. Upon request by any participant, a list of names of all winners, prizes, and correct (and winning) solutions must be provided.¹¹

Upon request by any member of the public, the actual number and percentage of contestants correctly solving each puzzle or game in the most recently completed contest must be provided.¹² The operator of the contest must keep detailed records of the contest for at least two years after all the prizes are awarded.¹³

These provisions do not apply to advertising programs that are regulated by, and comply with, the provisions of California law which govern the use of gifts or prizes to induce attendance at sales presentations (a type of promotional giveaway).¹⁴ Also, charitable trusts and corporations, or organizations which are exempt from taxation under state or federal law, are not bound by the provisions on the operation of contests.¹⁵

Finally, a contest in which participation is conditioned on payment of value and in which prizes are awarded primarily by chance is a lottery rather than a contest. Under California law, only the California State Lottery may operate a lottery. All other lotteries, except bingo games operated by charitable organizations, are prohibited by California's Penal Code.¹⁶

Legal Guides on the rules prohibiting lotteries and the rules for promotional giveaways are available from the California Department of Consumer Affairs, P.O. Box 310, Sacramento, CA 95802.

Enforcement

Any person who violates the provisions on operation of contests is guilty of a misdemeanor,¹⁷ and may be prosecuted by the Attorney General or by a district attorney. These provisions also are enforceable by civil court actions which can be filed by private parties, district attorneys, city attorneys, county counsel, the Attorney General and other agencies of the State. Depending on the nature of the action, remedies, may include civil penalties of up to \$2,500 for each violation, injunction, and restitution.¹⁸ A contest which violates these provisions also may be subject to an additional

civil penalty of up to \$2,500 for each violation as an unlawful business practice.¹⁹

NOTICE: The Department of Consumer Affairs strives to make its legal guides accurate in every respect. However, this legal guide is only a guideline, and is not a definitive statement of the law. Questions about the law's application to specific circumstances should be directed to an attorney.

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ENDNOTES

1. Business and Professions Code sections 17539.3(e), (f).
2. Business and Professions Code sections 17539.1(a)(9), (10).
3. Business and Professions Code section 17539.2(a).
4. Business and Professions Code sections 17539.1(a)(11), (13).
5. Business and Professions Code section 17539.1(a)(5).
6. Business and Professions Code section 17539.1(a)(1).
7. Business and Professions Code section 17539.1(a)(6).
8. Business and Professions Code sections 17539.1(a)(3), (7), (8).
9. Business and Professions Code section 17539.35.
10. Business and Professions Code section 17539.1(a)(14).
11. Business and Professions Code sections 17539.2(b), (c).
12. Business and Professions Code section 17539.1(a)(2).
13. Business and Professions Code section 17539.2(d).
14. Business and Professions Code section 17539.1(b). See Business and Professions Code section 17537.1.
15. Business and Professions Code section 17539.3(b).
16. Penal Code sections 319 and following; California Constitution, Article IV, section 19.
17. Business and Professions Code section 17534.
18. Business and Professions Code sections 17535, 17536.
19. Business and Professions Code section 17200.

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